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13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF CONTRA COSTA**

16 **CHERYL BURLEIGH**, individually and on  
behalf of all others similarly situated,

17 Plaintiff,

18 v.

19  
20 **NATIONAL UNIVERSITY**, a California  
Non-Profit Corporation,

21  
22 Defendant.  
23  
24  
25  
26  
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28

Case No.: MSC21-00939

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: March 11, 2022  
Time: 9:00 a.m.  
Dept.: 7  
Hon. Barry Baskin

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**TABLE OF CONTENTS**

**I. INTRODUCTION**.....1

**II. OVERVIEW OF THE SETTLEMENT**.....2

**III. OVERVIEW OF THE LITIGATION**.....4

    A. Pleadings .....4

    B. Discovery and Investigation.....5

    C. Mediation .....5

**IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS MERITED** .....6

    A. The Class Is Ascertainable and Sufficiently Numerous.....6

    B. A “Community of Interest” Exists Among CMs .....6

    C. A Class Action Is a Superior Method of Adjudication .....8

**V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE** .....8

    A. The Two-Step Settlement Approval Process .....8

    B. The Proposed Class Notice Content and Procedure Are Adequate .....12

    C. The PAGA Allocation Is Fair and Adequate .....12

    E. The Class Representative Service Award Is Preliminarily Reasonable.....14

    D. The Requested Attorneys’ Fees and Costs Are Preliminarily Reasonable .....15

**VI. CONCLUSION**.....15

**TABLE OF AUTHORITIES**

**CASES**

*Bernstein v. Virgin America, Inc.*,  
990 F.3d 1157 (9th Cir. 2021).....13

*Brinker Restaurant Corp. v. Superior Court*,  
53 Cal. 4th 1004 (2012).....6, 7

*Bufile v. Dollar Financial Group, Inc.*,  
162 Cal. App. 4th 1193 (2008).....8

*Caro v. Procter & Gamble Co.*,  
18 Cal. App. 4th 644 (1993).....7

*Cellphone Termination Fee Cases*,  
186 Cal. App. 4th 1380 (2010).....15

*Chavez v. Netflix, Inc.*,  
162 Cal. App. 4th 43 (2008).....9

*Cicero v. DirectTV, Inc.*,  
2010 U.S. Dist. LEXIS 86920 (C.D. Cal. July 27, 2010) .....15

*Cochran v. Schwan’s Home Service, Inc.*,  
228 Cal. App. 4th 1137 (2014).....9

*Dunk v. Ford Motor Co.*,  
48 Cal. App. 4th 1794 (1996).....8

*Fireside Bank v. Superior Court*,  
40 Cal. 4th 1069 (2007).....6

*Harvey v. Morgan Stanley Smith Barney LLC*,  
2019 U.S. Dist. LEXIS 151646 (N.D. Cal. Sept. 5, 2019).....14

*Iskanian v. CLS Transportation of Los Angeles, LLC*,  
59 Cal. 4th 348 (2014).....4, 14

*Johnson v. National University*,  
No. 37-2019-00007902-CU-OE-CTL (San Diego Cty. Super. Ct.).....5, 6

*Kullar v. Foot Locker Retail, Inc.*,  
168 Cal. App. 4th 116 (2008).....8, 9, 12

*Mayton et al. v. Konica Minolta Business Solutions USA, Inc.*,  
No. RG12657116 (Alameda Cty. Super. Ct. June 22, 2015) .....15

*Mullane v. Central Hanover Bank & Trust Co.*,  
339 U.S. 306 (1950) .....12

1	<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal. 5th 955 (2019).....	6
2	<i>North County Contractor’s Association v. Touchstone Insurance Services</i> , 27 Cal. App. 4th 1085 (1994).....	8
3		
4	<i>O’Connor v. Uber Technologies, Inc.</i> , 201 F. Supp. 3d 1110 (N.D. Cal. 2016) .....	13, 14
5	<i>Raphael v. Tesoro Refining &amp; Marketing Co.</i> , 2015 U.S. Dist. LEXIS 130532 (C.D. Cal. Sept. 25, 2015).....	13
6		
7	<i>Reyes v. Board of Supervisors</i> , 196 Cal. App. 3d 1263 (1987).....	6
8	<i>Seastrom v. Neways, Inc.</i> , 149 Cal. App. 4th 1496 (2007).....	7
9		
10	<i>Singer v. Becton Dickinson &amp; Co.</i> , 2010 U.S. Dist. LEXIS 53416 (S.D. Cal. June 1, 2010).....	15
11	<i>Wershba v. Apple Computers, Inc.</i> , 91 Cal. App. 4th 224 (2001).....	12
12		
13	<b><u>STATUTES</u></b>	
14	Cal. Code of Civil Procedure § 384 .....	4
15	Cal. Labor Code § 2699 .....	
16	Cal. Labor Code § 2802 .....	<i>passim</i>
17		
18	<b><u>OTHER AUTHORITIES</u></b>	
19	Cal. Rules of Court, Rule 3.766 .....	
20	Cal. Rules of Court, Rule 3.769 .....	6, 8
21	Judicial Council Emergency Rule No. 9 .....	14

1 **I. INTRODUCTION**

2 Plaintiff Cheryl Burleigh seeks preliminary approval of a non-reversionary \$925,000  
3 settlement of her class action expense reimbursement claims against National University  
4 (“Defendant” or “NU”). The Settlement also includes an obligation by NU to pay approximately  
5 \$1,000,000 in expense reimbursements to its remote adjunct instructors (at the rate of \$45 per month  
6 per adjunct) from October 2021 to October 2023. Plaintiff, who taught online courses for NU, alleges  
7 that NU failed to reimburse her and other adjunct instructors for the costs of working remotely,  
8 including home internet access. Plaintiff alleges that NU violated Labor Code § 2802, which requires  
9 reimbursement of reasonable and necessary business expenses. This case is brought on behalf of  
10 approximately 1,765 adjunct instructors employed by NU in California (“Class Members” or “CMs”)  
11 from December 10, 2019 to January 18, 2022 (the “Class Period”). This Settlement was reached after  
12 a full-day mediation, which was unsuccessful, followed by a mediator’s proposal which both sides  
13 accepted. The mediation was preceded by the production of extensive informal discovery and class  
14 data. If approved, the \$925,000 Settlement will provide CMs with an average gross recovery of \$524  
15 and an average net recovery of \$261. That is in addition to the \$1 million in direct reimbursement  
16 payments that NU has already begun to make to adjuncts and will continue to make over a two-year  
17 period. This is an outstanding result, given that the only claim asserted is for expense  
18 reimbursements, that CMs were generally only part-time workers, and that CMs are subject to  
19 arbitration agreements with class-action waivers. Absent this Settlement, CMs’ only avenue for  
20 recovering on their Labor Code § 2802 claims would be to pursue individual arbitrations for relatively  
21 small dollar amounts – a highly unrealistic option. This recovery represents an outstanding 92% of  
22 the Class’s estimated full exposure on the Section 2802 claims.

23 The Settlement Agreement (“SA”), which is attached as **Exhibit 1** to the Proposed Order,  
24 avoids significant risks, and is fair and reasonable. The Settlement was negotiated by, and is  
25 supported by, proposed Class Counsel who have extensive experience representing adjunct  
26 instructors in similar cases in California. Plaintiff requests that the Court certify the Class for  
27 settlement purposes, grant preliminary approval, approve the proposed Class Notice, and set a final  
28 approval hearing.

1 **II. OVERVIEW OF THE SETTLEMENT**

2 The Settlement resolves all claims of Plaintiff and the proposed Class that were alleged or  
3 could have been alleged based on the facts in the Complaint – *i.e.*, claims for failure to reimburse  
4 necessary business expenses under Labor Code § 2802 resulting from the fact that CMs had to work  
5 remotely to carry out their duties for NU. Decl. of William C. Jhaveri-Weeks ISO Pl.’s Mot. for  
6 Prelim. Approval (“Jhaveri-Weeks Decl.”) ¶ 24. The key Settlement terms are:

7 1. Gross Settlement Amount (“GSA”) – NU will pay a non-reversionary sum of  
8 \$925,000. SA § 1.11.

9 2. Injunctive Relief – For a period of two years starting from October 20, 2021,  
10 Defendant began providing, as a result of this lawsuit, and shall continue to provide reimbursement  
11 payments of at least \$45 per month to adjunct faculty in any month during which such employees  
12 are required to work remotely. SA § 4. In the SA, Defendant acknowledges that this lawsuit was a  
13 catalyst to NU’s changes in its reimbursement policy. *Id.* The monetary value of this injunctive  
14 provision is approximately \$1 million. *Id.*

15 3. Class Definition and Class Period – The Class is defined as “all persons who are or  
16 have been employed by Defendant in California as adjunct instructors during the Class Period.” SA  
17 § 1.2. The Class Period is from December 10, 2019 through January 18, 2022. SA § 1.5. The PAGA  
18 Members are “all persons who are or have been employed by Defendant in California as adjunct  
19 instructors during the PAGA Period.” SA § 1.13. The PAGA Period is co-extensive with the Class  
20 Period (December 10, 2019 through January 18, 2022). SA § 1.15. As explained below, the Class  
21 Period was negotiated as part of the Settlement, and is shorter than the maximum period allowed by  
22 statute because it runs from the end date of a settlement in a prior case that released CMs’ Labor  
23 Code § 2802 PAGA claims. *See* Jhaveri-Weeks Decl. ¶¶ 23, 35.

24 4. Attorneys’ Fees, Costs, and Named Plaintiff’s Service Award – Because the GSA of  
25 \$925,000 reflects less than half of the approximately \$1,925,000 monetary benefit obtained by Class  
26 Counsel for the Class, Class Counsel will seek attorneys’ fees of up to forty percent (40%) of the  
27 \$925,000 GSA, or \$370,000. SA § 6; Jhaveri-Weeks Decl. ¶ 50. Class Counsel will seek  
28 reimbursement of out-of-pocket litigation costs up to \$30,000 (SA § 6), and a Service Award of

1 \$7,500 to Plaintiff. SA § 7.

2 5. PAGA Penalties – As further discussed below, the Settlement allocates \$50,000 to  
3 the PAGA claim. SA § 8. The LWDA will be paid 75% of that amount (\$37,500). *Id.* The  
4 remaining \$12,500 will be paid to CMs as their 25% share of the settlement of civil penalties for  
5 PAGA penalties. *Id.* Every CM will receive a share of the PAGA Penalties even if he or she opts  
6 out of the class settlement. *Id.* § 11.4. Jhaveri-Weeks Decl. ¶¶ 23-24.

7 6. Settlement Administration Costs are estimated not to exceed \$20,000. SA § 9. The  
8 Parties selected CPT Group, Inc. (“CPT”) as Administrator. SA § 1.22. CPT is deeply experienced  
9 in administering class settlements and submitted a competitive bid. Decl. of Julie Green on Behalf  
10 of CPT at Ex. B (bid); Jhaveri-Weeks Decl. ¶ 25 (describing bid process).

11 7. The Net Settlement Amount (“NSA”) will total approximately \$460,000. Jhaveri-  
12 Weeks Decl. ¶ 24.<sup>1</sup> From this amount, each CM will receive payment based on the number of pay  
13 periods worked during the Class Period. SA § 5.1.1.

14 8. Class Notice – Within 14 business days of preliminary approval, Defendant will  
15 provide CPT with the Class Data List, which will allow CPT to calculate the estimated allocations  
16 of the Settlement distribution. SA § 10.1. Within 28 days of preliminary approval, after updating  
17 the addresses, CPT will mail each CM a Notice substantially in the form attached to the Settlement  
18 Agreement as **Exhibit A**. SA § 10.3. For all returned Notices, CPT will use skip tracing to update  
19 addresses and initiate a second mailing. SA § 10.4.

20 9. Automatic Participation – The Settlement is non-reversionary, and each CM will  
21 automatically receive his or her share of the NSA, unless he or she opts out. SA §§ 5.1, 11.3. PAGA  
22 Members will receive their share of PAGA Penalties even if they opt out. *Id.* § 11.4.

23 10. Opting Out or Objecting – CMs who wish to opt out of the Settlement must send a  
24 written Request for Exclusion to CPT requesting to opt out within 45 calendar days of the date the  
25 Notices are mailed out. SA §§ 1.20, 11. Any CM who properly requests to opt out will not be  
26 entitled to receive any payment under the Settlement and will not be bound by the Settlement, except

27

28 <sup>1</sup> This is the amount remaining after subtracting from the GSA attorneys’ fees, costs, service award,  
LWDA’s share of the amount allocated to PAGA Penalties, and administration costs. SA § 1.12.

1 that they will still receive their share of PAGA Penalties and be bound by the release of PAGA  
2 claims. SA §§ 11.2, 11.4, 16.2. Alternatively, a CM may object to the Settlement by sending CPT  
3 a written statement objecting to the Settlement. SA § 12.

4 11. Tax Consequences of Settlement Payments – For tax purposes, Settlement payments  
5 will be treated as non-wage income because they reflect reimbursement for business expenses,  
6 interest, and penalties. SA § 15.1.

7 12. Uncashed Checks – Settlement checks not cashed within 90 days of the date of  
8 mailing by CPT will be voided and funds will be tendered to Bay Area Legal Aid as *cy pres* recipient  
9 under Cal. Code of Civ. Proc. § 384. SA § 14.2; Jhaveri-Weeks Decl. ¶ 52 (explaining why *cy pres*  
10 recipient meets statutory criteria).

11 13. Scope of Release and Final Judgment – The class release in the SA is limited to claims  
12 “which are alleged, or could have been alleged based on the facts, circumstances, and primary rights  
13 at issue in the operative Complaint filed in this Action, and arising during the Class Period.” SA  
14 § 16.1. The named Plaintiff will also give a general release. SA § 16.3.

### 15 **III. OVERVIEW OF THE LITIGATION**

#### 16 **A. Pleadings**

17 Plaintiff filed this action on May 6, 2021, asserting only PAGA claims for NU’s alleged  
18 failure to reimburse its adjunct instructors, as well as other employees working remotely due to  
19 COVID-19, for necessary business expenses associated with working remotely in violation of Labor  
20 Code § 2802. Jhaveri-Weeks Decl. ¶ 16. Plaintiff brought the case as a “PAGA-only” action  
21 because NU’s contracts with CMs include an arbitration agreement that permits disputes to be raised  
22 only in arbitration on an individual basis, but PAGA representative actions are not subject to such  
23 limitations. *Id.* (citing *Iskanian v. CLS Transp. of L.A., LLC*, 59 Cal. 4th 348, 384 (2014)). In its  
24 Answer, NU made a general denial and raised 29 affirmative defenses. Jhaveri-Weeks Decl. ¶ 17.

25 As part of the Settlement in this case, the Parties filed a stipulation on January 26, 2022 to  
26 the filing of the (operative) First Amended Complaint, which adds class claims under Labor Code  
27 § 2802, and which defines the Class as defined in the Settlement Agreement – *i.e.*, adjunct instructors  
28 working between December 10, 2019, and January 18, 2022. *Id.* ¶ 18.



1           **B. Discovery and Investigation**

2           After the action was filed, the Parties agreed to mediate and exchange informal discovery.  
3 Jhaveri-Weeks Decl. ¶ 19. Defendant produced the following documents and data: (a) spreadsheets  
4 consisting of an anonymized class list showing dates of employment, number of workweeks per CM,  
5 and number of pay periods per CM; (b) Plaintiff Burleigh’s employment records; (c) the Adjunct  
6 Faculty Policies handbook; (d) NU policies concerning expense reimbursement; (e) a March 2020  
7 email from NU regarding the move to all online courses due to COVID-19; (f) an April 2020 email  
8 stating that non-adjunct-instructor employees working remotely due to COVID (and not provided  
9 with internet access by NU) would be automatically reimbursed approximately \$30/month for home  
10 internet and \$20/month for personal mobile phone use (if use of a personal mobile phone is  
11 authorized for the employee) due to COVID-19; and (g) an email dated September 30, 2021  
12 (approximately five months after this case was filed) in which NU informed its adjunct instructors  
13 that, as of November 12, 2021, it would begin paying adjuncts a monthly allowance of \$45 “to cover  
14 any work-related expenses for internet, phone, related data, and any other required supplies” in any  
15 month when the adjunct worked under a contract for NU. *Id.*

16           Defendant also produced documents related to a prior PAGA-only case against NU, *Johnson*  
17 *v. National Univ.*, 37-2019-00007902-CU-OE-CTL (San Diego Cty. Super. Ct.) (the “*Johnson*”  
18 case) involving Section 2802 reimbursements – that case resulted in a settlement of PAGA claims,  
19 including those premised on the Section 2802 violation alleged here, with the release running through  
20 December 9, 2019. Jhaveri-Weeks Decl. ¶ 20.

21           Additionally, through their own investigation, Plaintiff’s counsel gathered information from  
22 Defendant’s website concerning NU’s response to COVID-19 and NU’s policies and procedures  
23 concerning remote work. *Id.* ¶ 21. Plaintiff’s counsel conducted an online survey of CMs,  
24 interviewed survey responders, and gathered signed declarations from CMs stating that they incurred  
25 expenses to work remotely for NU but were not reimbursed. *Id.*

26           **C. Mediation**

27           On October 19, 2021, the Parties attended a full-day mediation with Louis Marlin, an  
28 experienced mediator. *Id.* ¶ 22. Plaintiff submitted a detailed mediation brief accompanied by 18

1 exhibits. *Id.* The brief described the facts and law and summarized the informal discovery  
2 exchanged in aid of mediation. *Id.* At the mediation, Plaintiff presented a PAGA Penalty exposure  
3 analysis, running from the end of the *Johnson* release period until October 2021, when NU began  
4 reimbursing CMs. *Id.* Plaintiff also presented a calculation of damages for the underlying Section  
5 2802 claims if the case were to be certified as a class action for the adjunct instructors working  
6 during the PAGA Period. *Id.* The Parties were not able to reach a settlement that day, but in the  
7 days following the mediation, Mr. Marlin made a mediator’s proposal, and the Parties accepted. *Id.*  
8 ¶ 23. As part of the Settlement, Defendant agreed to allow the amendment of the Complaint to add  
9 class claims for the 1,765 CMs working during the PAGA Period, with the Parties negotiating for a  
10 Class Period (and class release) that would be co-extensive with the PAGA Period, rather than  
11 extending back to the beginning of the full Section 2802 statutory period. *Id.*

12 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS MERITED**

13 When a negotiated class action settlement is reached prior to certification, the Court may  
14 approve certification of a provisional settlement class. Cal. Rules of Court, Rule 3.769(d). A class  
15 is certifiable if (1) it is ascertainable and sufficiently numerous; (2) there is a well-defined  
16 community of interest; and (3) a class action would be a superior method of adjudication. *See id.* at  
17 435; *see also Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012).

18 **A. The Class Is Ascertainable and Sufficiently Numerous**

19 Whether a class is ascertainable is determined by examining the class definition, the size of  
20 the class, and the means available for identifying CMs. *See Reyes v. Bd. of Supervisors*, 196 Cal.  
21 App. 3d 1263, 1271 (1987). CMs are “ascertainable” because they may be readily identified from  
22 NU’s records. *See Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 986 n.15 (2019). The Class is  
23 sufficiently numerous because it has approximately 1,765 members. Jhaveri-Weeks Decl. ¶ 26.

24 **B. A “Community of Interest” Exists Among CMs**

25 The “community of interest” requirement has three factors: (1) common questions of law or  
26 fact that predominate; (2) class representatives with typical claims; and (3) class representatives who  
27 can adequately represent the class. *Fireside Bank v. Super. Ct.*, 40 Cal. 4th 1069, 1089 (2007).  
28

1                                   **1.        Common Questions of Law and Fact Predominate**

2           The ultimate question of predominance is whether ““the issues which may be jointly tried,  
3 when compared with those requiring separate adjudication, are so numerous or substantial that the  
4 maintenance of a class action would be advantageous to the judicial process and to the litigants.””  
5 *Brinker*, 53 Cal. 4th at 1021 (citations omitted). Whether common questions predominate depends  
6 on whether plaintiff’s theory of recovery is ““as an analytic matter, likely to prove amenable to class  
7 treatment.”” *Id.* (citation omitted). If liability can be determined by common facts, the need to  
8 individually prove damages does not prevent certification. *Id.* at 1022.

9           Plaintiff contends that common questions of law and fact predominate here. Adjunct  
10 teaching duties were frequently done remotely during the Class Period, either because the adjuncts  
11 taught online classes generally, or because they were teaching remotely during COVID. Jhaveri-  
12 Weeks Decl. ¶ 27. Whether NU’s alleged failure to reimburse CMs for internet and other remote-  
13 work expenses violated Labor Code § 2802 is a common legal question. Common factual questions  
14 include whether CMs taught online courses remotely for Defendant during the Class Period and  
15 whether they reasonably incurred the cost of internet in carrying out their job duties for Defendant.

16                                   **2.        Plaintiff’s Claims Are Typical**

17           Plaintiff is typical because, like the Class, she was an adjunct professor who taught remotely  
18 without reimbursement for expenses. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502  
19 (2007). She was subject to the same alleged unlawful practice by Defendant as alleged by the rest  
20 of the Class, and she seeks the same relief as the Class.

21                                   **3.        Plaintiff and Her Attorneys Will Adequately Represent the Class**

22           ““Adequacy of representation depends on whether the plaintiff’s attorney is qualified to  
23 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the  
24 class.”” *Caro v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669 n.21 (1993) (citations omitted).  
25 Class Counsel – HammondLaw and The Jhaveri-Weeks Firm – have extensive class action litigation  
26 experience. Jhaveri-Weeks Decl. ¶¶ 6-15, 12; Decl. of Julian Hammond ISO Plaintiff’s Mot. For  
27 Prelim. Approval of Settlement (“Hammond Decl.”) ¶¶ 6-13. Plaintiff’s Counsel together have more  
28 experience representing adjunct instructors in California than any other firm, and have been

1 appointed class counsel in at least 18 such cases over the past five years. Hammond Decl. ¶ 10;  
2 Jhaveri-Weeks Decl. ¶ 7. Plaintiff has undertaken to represent the Class, her interests are  
3 coextensive with the Class’s, and she has no conflict with the Class. Jhaveri-Weeks Decl. ¶ 29.

4 **C. A Class Action Is a Superior Method of Adjudication**

5 Plaintiff’s claims depend on common evidence, including NU’s alleged unlawful  
6 reimbursement policy for adjuncts and Plaintiff’s contention that all adjuncts were required to obtain  
7 internet at their own expense to carry out their duties as online instructors. Jhaveri-Weeks Decl.  
8 ¶ 30. It would be inefficient to resolve these claims at separate trials. *Id.*; *see also* *Bufile v. Dollar*  
9 *Fin. Grp., Inc.*, 162 Cal. App. 4th 1193, 1208 (2008). The claims of each CM are relatively small,  
10 and it would be impractical to litigate on an individual basis. Jhaveri-Weeks Decl. ¶ 30; *Bufile*, 162  
11 Cal. App. 4th at 1208. Thus, a class action is the superior method of adjudication.

12 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**  
13 **BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE**

14 **A. The Two-Step Settlement Approval Process**

15 Court approval of a class settlement is a two-step process: first, a preliminary review of the  
16 reasonableness of the settlement, and second, after notice has been distributed to the Class, a final  
17 approval analysis taking into account the Class’s response. *See* Cal. Rule of Court, Rule 3.769; *Dunk*  
18 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). Courts analyzing whether a settlement  
19 is fair and reasonable (either at the preliminary or final approval step) consider a number of factors:  
20 (1) the strength of Plaintiff’s case balanced against the settlement amount; (2) the risk, expense,  
21 complexity, and likely duration of further litigation and the risk of maintaining class action status  
22 through trial; (3) the extent of discovery completed and stage of the proceedings; (4) the experience  
23 and views of counsel; and (5) the reaction of the Class to the proposed settlement. *Kullar v. Foot*  
24 *Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128, 130 (2008). At preliminary approval, courts  
25 generally approve the sending of notice if the settlement appears to be within the range of acceptable  
26 settlements. *See N. Cty. Contractor’s Ass’n v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-  
27 90 (1994). A settlement is “presumed to be fair” when (1) it “is reached through arm’s-length  
28 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act

1 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is  
2 small.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 (2008) (citation omitted).

3 As detailed below, the Settlement represents **92%** of NU’s exposure on the Labor Code  
4 § 2802 claim alone – *i.e.*, not including the \$50,000 allocated to PAGA – and that is without any  
5 discount to reflect the risks and delays that the Class would face if litigation were to continue.  
6 Jhaveri-Weeks Decl. ¶ 31. Given the substantial relief obtained for the Class and the certainty of  
7 that payment now rather than years of uncertainty and the necessity for Class Members to file  
8 individual arbitrations to obtain relief, the Settlement meets the criteria for preliminary approval. *Id.*

9 **1. The Gross Settlement Amount Is Reasonable Compared to the Potential**  
10 **Recovery**

11 A comparison of the recovery achieved by the Settlement to the strength of the Class’s  
12 claims is the most important factor in analyzing the fairness of the Settlement. *Kullar*, 168 Cal.  
13 App. 4th at 130. Here, an examination of the likely recovery demonstrates that the proposed  
14 Settlement of \$925,000 is reasonable (even apart from the forward-looking monetary relief  
15 provided by the settlement’s injunctive relief provision). Jhaveri-Weeks Decl. ¶ 32.

16 Plaintiff alleges that Defendant employed CMs to teach online courses (and, even if they  
17 traditionally taught in-person courses, to teach remotely during COVID-19), yet NU did not  
18 reimburse the costs of home internet or other necessary business expenses associated with working  
19 from home. *Id.* Even if CMs would have paid for home internet, mobile phone, or other costs  
20 regardless of whether they performed work for NU, NU was still required to reimburse a “reasonable  
21 percentage” of that cost. *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1140  
22 (2014) (requiring reimbursement of a “reasonable percentage” of costs of personal cell phone service  
23 when phone is used for work). Based on Plaintiff’s costs, the results of the surveys of CMs conducted  
24 by Class Counsel, and Defendant’s own decision (as a result of this case) to start paying monthly  
25 “remote expense” reimbursements of \$45 per month, Plaintiff adopted \$45 per month as a  
26 “reasonable percentage” of expenses for purposes of evaluating NU’s exposure in this case. Jhaveri-  
27 Weeks Decl. ¶ 32. Based on the Class size and dates worked, Plaintiff calculated Defendant’s  
28 maximum exposure under Section 2802 (not including PAGA, which is discussed below) during the

1 Class Period as **\$947,970**. *Id.* ¶ 33. The Settlement amount reached by the Parties, excluding the  
2 \$50,000 allocation to PAGA, represents **92%** of Defendant’s maximum exposure on the § 2802  
3 claim. *Id.* (*i.e.*,  $(\$925,000 - \$50,000) / \$947,970 = 92\%$ ). And this is without taking into account  
4 the approximately \$1 million in additional reimbursements over a two-year period spurred by the  
5 lawsuit and enforceable under the Settlement Agreement. *Id.*

6 If litigation were to proceed, Plaintiff would not be able to maintain a class action due to  
7 the individual-only arbitration provisions, which are currently enforceable under California law. *Id.*  
8 ¶ 34. Plaintiff would have been left to pursue a PAGA-only action, with no Section 2802 claims for  
9 damages, and if Plaintiff had succeeded, 75% of the recovery would have been paid to the state, with  
10 CMs receiving nothing for their underlying Section 2802 claims and only 25% of any PAGA  
11 penalties awarded by the Court. *Id.* Class Members would have had to bring individual arbitrations  
12 to recover anything under Labor Code § 2802 at all. *Id.* Thus, the Settlement is clearly superior to  
13 the alternative of moving forward with this case. *Id.*

14 In addition, whether proceeding on a class or PAGA-only basis, Plaintiff would have faced  
15 arguments that individualized issues prevented a group resolution of this case, given that CMs would  
16 have had different expenses and different work circumstances, and the amount of expenses that was  
17 reasonable for one CM might not have been reasonable for another. *Id.* ¶ 35. On the merits, Plaintiff  
18 faced a risk that not all CMs would have incurred certain types of expenses, and that a fact-finder  
19 would have found \$45 per month to be more than the “reasonable percentage” of reimbursement,  
20 considering that CMs were part-time employees. *Id.* That the Parties negotiated for a shorter Class  
21 Period (and release period) on the class claims than the full statutory period for Section 2802 claims  
22 was well-justified by (a) the substantial benefits to CMs of a class claim, even if shorter than the full  
23 statutory period, and (b) the fact that NU had already settled and obtained a release of similar PAGA  
24 claims through December 9, 2019. *Id.* Any CM who prefers to pursue Section 2802 claims on an  
25 individual basis in arbitration for the full statutory period will be free to opt out and do so. *Id.*

26 Given the drastic risk posed by the individual-only arbitration agreements, as well as the  
27 foregoing risks posed on the merits and certification/manageability, Plaintiff viewed the outcome as  
28 an overwhelming success for the Class – resulting in a recovery on the Section 2802 claims that was

1 many orders of magnitude larger than the (likely zero) recovery CMs would have received on their  
2 underlying Labor Code claims absent this Settlement. *Id.* ¶ 36.

3           **2. The Risk, Expense, Complexity, and Likely Duration of Further**  
4           **Litigation Support the Reasonableness of the Settlement**

5           Absent a settlement, no class claim would be possible. Jhaveri-Weeks Decl. ¶ 37. Rather,  
6 the case would proceed as a PAGA-only case, which could take years to resolve at the trial phase,  
7 as Plaintiff’s Counsel know from litigating similar cases brought by adjunct instructors. *Id.*;  
8 Hammond Decl. ¶¶ 10-13. Voluminous evidence would be needed to prove damages; expert  
9 testimony and expert discovery could be required to prove the damage calculations; and trial would  
10 be complex given the number of adjunct instructors involved. Jhaveri-Weeks Decl. ¶ 37. Regardless  
11 of which side prevailed at trial, an appeal would be likely, creating additional delay and uncertainty  
12 for the employees’ receipt of any recovery. *Id.* Even if Plaintiff prevailed, the Court could have  
13 discounted any PAGA Penalties as a matter of discretion (*see below*), and 75% of any penalties  
14 ultimately awarded by the Court and affirmed on appeal would have to be paid to the LWDA. *Id.*

15           In addition, Defendant disputed the merits of Plaintiff’s claims and her ability to satisfy  
16 PAGA’s manageability requirements, given the number of people at issue and the need to rely on  
17 representative proof. *Id.* ¶ 38. Defendant also contested the merits of Plaintiff’s claims on the basis  
18 that she works for multiple universities at a given time, and thus that her (and other adjuncts’)   
19 business expenses attributable to NU are negligible and/or impossible to ascertain without an  
20 individualized analysis. *Id.* This Settlement provides an efficient resolution of this dispute, and  
21 CMs will obtain a substantial recovery now without the major disadvantages (*i.e.*, no ability to pursue  
22 underlying Section 2802 claims) and the lengthy delays that further litigation would entail. *Id.*

23           **3. The Settlement Is the Product of Informed, Non-Collusive Negotiations**

24           The Settlement is the result of arm’s-length negotiations between the Parties, reached after  
25 a mediation with an experienced mediator that did not result in a settlement until a mediator’s  
26 proposal was made following the mediation. Jhaveri-Weeks Decl. ¶ 39. Plaintiff engaged in  
27 significant informal discovery, interviewing CMs, locating relevant publicly available information  
28 from Defendant’s website, and gathering and reviewing Plaintiff’s documents. *Id.* Plaintiff was

1 well-informed about the strengths and weaknesses of the Class’s claims, and well-positioned to  
2 conclude that this Settlement was an excellent outcome for the Class. *Id.*

3 **4. Views of Experienced Counsel Support the Settlement**

4 Class Counsel have extensive experience in class litigation, particularly on behalf of  
5 adjunct instructors. Jhaveri-Weeks Decl. ¶¶ 6-15; Hammond Decl. ¶¶ 6-13. Class Counsel  
6 consider the Settlement an outstanding result. Jhaveri-Weeks Decl. ¶ 40; Hammond Decl. ¶ 15.  
7 The average gross recovery per CM of \$574.08 (nearly a year’s worth of reimbursements at  
8 \$45/month) and average net recovery of \$261 are substantial, particularly given that CMs were  
9 generally part-time workers teaching limited hours for NU. Jhaveri-Weeks Decl. ¶ 40.<sup>2</sup>

10 **B. The Proposed Class Notice Content and Procedure Are Adequate**

11 Constitutional due process requires that CMs be provided with notice sufficient to give them  
12 an opportunity to be heard. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).  
13 Proper notice must provide information to allow CMs to make an informed decision to accept or  
14 object to the settlement. *Id.*; *see also Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 251-52  
15 (2001). Here, the proposed Notice provides: (1) the material terms of the Settlement, (2) the CM’s  
16 anticipated Settlement share, (3) how to object or opt out, (4) how to obtain more information about  
17 the claims, (5) the proposed fees and costs of Class Counsel and for settlement administration, (6)  
18 the proposed service award to the Class Representative, and (7) the date and time of the final approval  
19 hearing. *See Exhibit A* to the SA (Class Notice); *see also* Cal. Rules of Court, Rule 3.766.

20 The procedure for distribution of Notice has “a reasonable chance of reaching a substantial  
21 percentage of the [CMs].” *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 974 (1975). The Notice will be  
22 sent by first class mail to the most recent address of each CM. SA §§ 10.1.1-10.1.3. If a Notice is  
23 returned as undeliverable, CPT will use skip tracing and resend it if a new address is identified. SA  
24 § 10.1.4. As such, the Notice is likely to reach most, if not all, CMs.

25 **C. The PAGA Allocation Is Fair and Adequate**

26 The \$50,000 allocated to PAGA penalties – 5.4% of the GSA – is fair and adequate. Jhaveri-

27 \_\_\_\_\_  
28 <sup>2</sup> The final prong of the *Kullar* test – the reaction of the Class – will be evaluated at final approval.



1 Weeks Decl. ¶ 41. The proposed Settlement fulfills PAGA’s purposes as NU has changed its policies  
2 to begin reimbursing CMs, and is bound by the Settlement Agreement to continue doing so well into  
3 the future. *Id.* The Settlement also provides robust relief to the Class, with near-complete relief on  
4 the underlying Labor Code violation. *Id.* These two factors – deterrent effect and the compensation  
5 provided to the Class – are what the courts consider in evaluating the adequacy of a PAGA  
6 settlement. *See O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016).  
7 Because the PAGA exposure is significant (though highly uncertain), the percentage of the  
8 Settlement devoted to the PAGA allocation in this case is considerably larger than PAGA allocations  
9 that have received final approval in similar wage and hour cases on behalf of adjuncts. Jhaveri-  
10 Weeks Decl. ¶ 42 (citing examples).

11 Defendant’s maximum exposure in PAGA penalties is \$4,213,200, calculated at \$100 per  
12 pay period, but Defendant’s realistic PAGA exposure is far smaller. *Id.* ¶ 43; *see also Bernstein v.*  
13 *Virgin Am., Inc.*, 990 F.3d 1157, 1172-73 (9th Cir. 2021) (holding that all PAGA violations were  
14 “initial” violations because a court or the Labor Commissioner had not previously imposed penalties  
15 on defendant, such that defendant was not on notice of the Labor Code violation). *First*, the exposure  
16 could be cut in half if the Court decided to award only one PAGA penalty per month, given that  
17 reimbursements are typically paid on a monthly basis, which would result in PAGA exposure of  
18 \$2,106,600. Jhaveri-Weeks Decl. ¶ 43. *Second*, PAGA claims “can be stricken if they are found to  
19 be ‘unmanageable,’” and given the large number of employees at issue and the fact that only CMs  
20 who actually incurred unreimbursed expenses in a particular pay period could recover PAGA  
21 penalties, the Court might have found the PAGA claim unmanageable. *Id.* ¶ 44 (citing *Raphael v.*  
22 *Tesoro Ref. & Mktg. Co.*, 2015 U.S. Dist. LEXIS 130532, at \*6-7 (C.D. Cal. Sept. 25, 2015)). *Third*,  
23 Plaintiff argued that the PAGA Period was extended an additional 5 pay periods by the Judicial  
24 Council’s Emergency Rule No. 9 – a position that Defendant vigorously contested and which  
25 implicates an unsettled legal issue. Jhaveri-Weeks Decl. ¶ 45. And *fourth* and most importantly, the  
26 Court has discretion to drastically reduce any award of PAGA penalties as “unjust, arbitrary and  
27 oppressive, or confiscatory” under Labor Code § 2699(e)(2). *Id.* ¶ 46. This is especially the case  
28 when, as here, the PAGA Penalties are being paid in conjunction with a very significant settlement

1 of the underlying alleged Labor Code violation. *Id.* The significant payment for the underlying  
2 violation serves PAGA’s goals of deterrence and punishment, creating a reason for significantly  
3 reducing the PAGA Penalties. *Id.* For example, when Plaintiff’s Counsel recently prevailed at trial  
4 on a class of adjunct instructors’ wage statement claims, the court, as a matter of discretion, awarded  
5 only 15% of the PAGA penalties, noting that the defendant’s payment of the wage statement  
6 penalties already largely satisfied PAGA’s goals of deterrence and punishment. *Id.*

7 Here, if the PAGA Penalties were awarded only on a monthly basis, were discounted by 20%  
8 to account for the risk of being found un-manageable, were limited to the normal PAGA Period  
9 without an extension resulting from the COVID Emergency Order, and were then awarded at 15%,  
10 the resulting estimated penalty award is \$224,704. *Id.* ¶ 47. The Settlement’s PAGA allocation of  
11 \$50,000 is a reasonable percentage (22%) of that risk-adjusted exposure, given that courts reviewing  
12 PAGA awards in the context of class settlements take into account the relief obtained for the class,  
13 as well as the deterrent effect of the settlement. *Id.* (citing *O’Connor*, 201 F. Supp. 3d at 1134).

14 Plaintiff submitted a copy of the SA to the LWDA on the date of this filing, along with  
15 information about the date and time of the preliminary approval hearing, permitting the LWDA the  
16 option of objecting to the PAGA allocation. *Id.* ¶ 48.<sup>3</sup>

17 **D. The Class Representative Service Award Is Preliminarily Reasonable**

18 In conjunction with seeking final approval, Plaintiff will move for approval of a Class  
19 Representative Service Award of \$7,500 to recognize the time and effort she expended for the Class,  
20 as well as the general release she is giving NU. Jhaveri-Weeks Decl. ¶ 49. That motion will be  
21 supported by Plaintiff’s declaration describing her work for the Class. *Id.* The requested award falls  
22 well within the range of incentive payments typically awarded to Class Representatives in similar  
23

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24 <sup>3</sup> PAGA Members will be bound by the PAGA settlement, even if they opt out of the Class  
25 settlement. The PAGA statute affords no right to opt out, and the real party of interest is the State,  
26 which has been given notice and an opportunity to object. *See Iskanian v. CLS Transp. Los Angeles,*  
27 *LLC*, 59 Cal. 4th 348, 382 (2014) (“A PAGA representative action is [ ] a type of *qui tam* action ...  
28 The government entity on whose behalf the plaintiff files suit is always the real party in interest in  
the suit.”); *see also Harvey v. Morgan Stanley Smith Barney LLC*, 2019 U.S. Dist. LEXIS 151646,  
at \*6 (N.D. Cal. Sept. 5, 2019) (“[P]otentially aggrieved employees under PAGA do not have the  
right to object [to] or opt out of a PAGA settlement.”).

1 class actions. *See, e.g., Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010)  
2 (affirming awards of \$10,000). Granting preliminary approval will provide the Class notice of the  
3 requested service award and the opportunity to object to it. *See* SA §§ 10.1.7, 12.

4 **E. The Requested Attorneys' Fees and Costs Are Preliminarily Reasonable**

5 Also in conjunction with final approval, Plaintiff will move for an award of attorneys' fees of  
6 40% of the \$925,000 GSA, or \$370,000. SA § 6. The reason that the fee request is higher than the  
7 benchmark of one-third of the common fund is that Class Counsel also obtained injunctive relieve  
8 resulting in approximately \$1 million of additional compensation to CMs (SA § 4). Jhaveri-Weeks  
9 Decl. ¶ 50. No attorneys' fees at all will be deducted from that \$1 million, making the request of  
10 40% of the \$925,000 GSA reasonable. *Id.* Even absent the injunctive relief component, a 40% fee  
11 is within the range that courts routinely award. *See, e.g., Mayton et al. v. Konica Minolta Business*  
12 *Solutions USA, Inc.*, No. RG12657116 (Alameda Cty. Super. Ct. June 22, 2015) (awarding  
13 HammondLaw fees representing 40% of the settlement in a Labor Code § 2802 class action  
14 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, at \*23 (S.D. Cal. June  
15 1, 2010) (citing cases awarding 40% of common fund in wage and hour class actions); *Cicero v.*  
16 *DirectTV, Inc.*, 2010 U.S. Dist. LEXIS 86920, at \*17 (C.D. Cal. July 27, 2010) (“Other case law  
17 surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded in case in which  
18 the common fund is relatively small.”). Plaintiff will also request reimbursement for out-of-pocket  
19 litigation costs up to \$30,000. SA § 6. The Court need not decide now the attorneys' fees and  
20 expenses to approve – if the Court grants preliminary approval, Class Counsel will file a fully-briefed  
21 motion for attorneys' fees and costs, supported by detailed lodestar information, to be heard after the  
22 completion of the Notice process. Jhaveri-Weeks Decl. ¶ 51.

23 **VI. CONCLUSION**

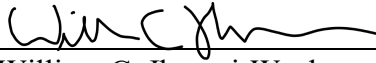
24 The Settlement of \$925,000, along with injunctive relief valued at approximately \$1 million,  
25 is within the range of acceptable settlements and provides substantial monetary relief to the Class  
26 despite CMs being party to individual-only arbitration agreements. Plaintiff requests that the Court  
27 certify the Class for settlement purposes, preliminarily approve the Settlement, and order that Notice  
28 be provided to the Class as set forth in the proposed Order.

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DATED: January 28, 2022

Respectfully submitted,

THE JHAVERI-WEEKS FIRM, P.C.

  
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William C. Jhaveri-Weeks

*Attorneys for Plaintiff and the Putative Class*